

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

08/24/2001

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

M. MINKOW
Deputy

CV 2001-010240

FILED: _____

SUSAN SHAFER

GERALD F MOORE

v.

SAMUEL T GOODMAN, et al.

RICHARD L NOTHWEHR

REMAND DESK CV-CCC
SCOTTSDALE JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this Special Action pursuant to A.R.S. Sec. 12-124.

On July 11, 2001, after hearing oral argument on the Petition for Special Action and Request for Stay, this Court accepted jurisdiction of this Special Action and issued an interlocutory stay which stayed all proceedings in the Scottsdale Justice Court pending further order of this Court. This Court also ordered the preparation of transcripts from the evidentiary hearing before the Scottsdale Justice Court. Those transcripts were received by this Court on July 23, 2001. This case has been under advisement since July 23, 2001, and the Court has reviewed the record of the proceedings from the Scottsdale Justice Court, and the excellent memoranda submitted by counsel.

In this case, Susan Shafer was charged with two counts of driving while under the influence of intoxicating liquor in the Superior Court Judge in violation of A.R.S. Sec. 28-1381(A)(1) and (A)(2), both Class 1 misdemeanors. After her arrest, Ms.

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Shafer was transported to a police van for a blood draw. The blood draw was performed by phlebotomist Thomas Booth. Petitioner, Susan Shafer, filed a Motion to Suppress the blood test based on her claim that the State had violated A.R.S. Sec. 28-1388(A) which requires that only a physician, a registered nurse or another qualified person may withdraw blood for purposes of determining the alcohol content. On May 11, 2001, Judge Samuel T. Goodman denied Appellant's Motion to Suppress. This Petition for Special Action followed.

In an obviously well thought-out and constructed argument, the Petitioner claims that a phlebotomist who is not supervised by a physician [as medical assistants are required under A.R.S. Sec. 32-1456 (A)] is not a "qualified person within the meaning of A.R.S. Sec. 28-1388(A)." Therefore, Petitioner asserts that the trial judge erred in denying her Motion to Suppress the results of the blood draw.

First, this Court notes that A.R.S. Sec. 32-1456(A) is a regulatory statute governing medical assistants. That statute has no applicability to a forensic blood draw in a criminal case.

Evidence was presented to the trial judge that a qualified individual performed the blood draw in this case. It is important to note that there is no question but that the blood draw was performed properly by someone who knew what they were doing, who had experience, and that no physical harm was caused to the Petitioner during the blood draw. The only question is whether the phlebotomist was supervised by a physician. Impliedly, the trial judge found that the phlebotomist was a qualified individual within the meaning of applicable law. A.R.S. Sec. 28-1388(A); State v. Nihiser, 191 Ariz. 199, 953 P.2d 1252 (App. 1997).

Most importantly, A.R.S. Sec. 28-1388(A) provides in the second sentence of that section:

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The qualifications of the individual withdrawing the blood and the method used to withdraw the blood are not foundational prerequisites for the admissibility of a blood alcohol content determination made pursuant to this subsection.

Petitioner seems to have ignored the second sentence of this statute as quoted above. Clearly, our legislature has provided that the qualifications of the individual or phlebotomist withdrawing the blood are not foundational prerequisites for the admissibility of the alcohol content of the blood. There is no statutory nor constitutional right to have a medical assistant or phlebotomist supervised by a physician perform a blood draw under either Arizona law or Federal law.

Petitioner's complaints regarding the phlebotomist are therefore without merit. The trial judge correctly denied the Motion to Suppress for the reasons that the qualifications of the person making the blood draw are not prerequisites to the admissibility of the results of the blood draw.

IT IS ORDERED affirming the ruling of the Scottsdale Justice Court denying Petitioner's Motion To Suppress evidence obtained from a blood draw.

IT IS ORDERED terminating the stay order previously issued.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale Justice Court for all future proceedings.